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**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-203996  
B-203996.2  
MATTER OF:

DATE: December 23, 1981

**DIGEST:**

Coalition of Higher Education Assistance  
Organizations; American Collectors  
Association, Inc.

1. The determination of the needs of the Government and the methods of accommodating the needs is primarily the responsibility of the procuring agency. A protester who objects to the specifications in an RFP bears a heavy burden. Protesters' objections to the RFP specifications concerning hardware, software, location of office, etc., will not be questioned since it cannot be concluded that the procuring activity has no reasonable basis for those requirements.
2. Competitive advantage gained by offeror as a result of prior performance of Government contract is not improper.

The Coalition of Higher Education Assistance Organizations (COHEAO) and the American Collectors Association, Inc. (ACA), are trade associations protesting on behalf of their membership request for proposals (RFP) No. 81-093 issued by the Department of Education (Education) for private agency collection of defaulted student loans under the Federal Insured Student Loan and National Direct Student Loan Programs, two segments of the Guaranteed Student Loan Program. We have been advised by Education that the contracts were awarded, the protests notwithstanding, on November 25, 1981.

We deny the protests.

Education has consolidated all of its Guaranteed Student Loan Program accounts into three regional offices: Atlanta, Chicago and San Francisco. The RFP provided that three contracts will be awarded--one contract for each city and the corresponding regional area. Each offeror could submit a separate proposal for up to two of the cities. If an offeror submitted

a proposal for each city, all of its proposals would be rejected.

Essentially, COHEAO and ACA submit that section 1.1 of the Statement of Work is overly restrictive and limits competition. The section provides that, if an offer is submitted to collect delinquent student loans for any region, an office must be established in the corresponding city on or before the time of award. In addition, both contend that there is no need for an office in any of the cities. The protesters also question the requirements for hardware, software and the schedule of deliverables. Moreover, COHEAO states that the following requirements are unnecessary: the placement of a monitor at the collection agency's office in the region, telling the collection agency how to train their employees or how to achieve quality control or the type of letterhead to use or how to update its internal files.

A protester who objects to the specifications in an RFP bears a heavy burden. Washex Machinery Corporation, B-191224, July 20, 1978, 78-2 CPD 54. This is because the determination of the needs of the Government and the methods of accommodating the needs is primarily the responsibility of the contracting agencies of the Government. Manufacturing Data Systems, Incorporated, B-180608, June 28, 1974, 74-1 CPD 348; 38 Comp. Gen. 190 (1958); B-174140, B-174205, May 16, 1972. We recognize that Government procurement officials, who are familiar with the conditions under which supplies, equipment or services have been used in the past and how they are to be used in the future, are generally in the best position to know the Government's actual needs and, therefore, are best able to draft appropriate specifications. Particle Data, Inc., B-179762, B-178718, May 15, 1974, 74-1 CPD 257. Consequently, we will not question an agency's determination of what its minimum needs are unless there is a clear showing that the determination has no reasonable basis. Hydro Conduit Corporation, B-188999, October 11, 1977, 77-2 CPD 282; Microcom Corporation, B-186057, November 8, 1976, 76-2 CPD 385.

On the other hand, we also recognize that procurement agencies are required to state specifications in terms which will permit the broadest field of competition within the minimum needs required and not the maximum desired. Specifications based only on personal preference or a finding that a particular item has superior or more desirable characteristics in excess of the Government's actual needs are generally considered overly restrictive. Drexel Dynamics Corporation, B-188277, June 2, 1977, 77-1 CPD 385 (reversed on new facts in The Raymond Corporation; Air Force--requests for reconsideration, B-188277, September 16, 1977, 77-2 CPD 197); Maremont Corporation, 55 Comp. Gen. 1365 (1976), 76-2 CPD 181.

With respect to the issue concerning the establishing of an office by the time of award, COHEAO and ACA complain that this requirement without any indication of award would be a prohibitive investment for many companies and, therefore, restricts competition. Essentially, it is the protesters' position, assuming that the office requirement is reasonable, that an office could be established within a reasonable amount of time from award and the performance dates specified in the RFP could still be satisfied.

It is Education's position that the requirement was necessary because:

"The offeror must be able to show that it is able to start work immediately (date of award) due to the urgency of the requirement."

In addition, Education says, and we agree, that this requirement did not preclude any potential offeror from submitting a proposal. It only required that the successful offeror(s) show it was capable of establishing an office by the time the contract was awarded. In this regard, while the requirement could have more clearly indicated that Education was concerned with an offeror's ability to establish an office, this does not render the specification overly restrictive.

Concerning the need for an office within the contract designated city, the protesters question the requirement. It appears that they believe other methods could be established to permit collection agencies without an office in the specified city to provide the specified debt collection operations.

Education, on the other hand, contends that an office within the contract city is needed because of "the necessary interrelationship between the contractor and project office for exchange of information, communications with the [Guaranteed Student Loan] system, and the necessity, presented by law, for the Government to make certain decisions on defaulted accounts." Education believes this would enhance the efficiency and effectiveness of the debt collection operations. There would be an ease of the physical transfer of hard copy records and the computer tapes which is set forth in the RFP.

This requirement could hardly be termed unnecessary. Education, in an effort to obtain one of its objectives, a close and coordinated relationship with the collection agencies, which we find reasonable, has required an awardee to be located within close proximity of Education's regional office. While there may be other methods to accomplish this result, we do not find that this alone renders the requirement unreasonable.

The protesters next raise questions concerning the requirements for hardware, software and the schedule of deliverables. In regard to the hardware and software requirements, the protesters agree that compatibility with Education's computer system is a legitimate objective. However, the protesters contend that the requirement for specific hardware and the establishment of specific software are conducive to the large collection agencies. In addition, the requirement that the awardee's computer print its letters, how the awardee should update its internal files and what type of computer terminal must be utilized are all matters that should be left to the sound business judgment of the awardees. Both protesters question, COHEAO in more detail, the 1-month time period set forth under § 5.1- Contractor's Schedule of Deliverables for the establishment of an operational system

(hardware and software)--and the testing of communications between the awardees and Education.

At the outset, we note that on August 6, 1981, amendment No. 3 was issued by Education. This amendment extended the timeframe from 1 month to 2 months for certain of the requirements under the schedule of deliveries. COHEAO, in its September 23, 1981, submission, mentions the amendment and characterizes the extension of time as reasonable. ACA, in its August 6, 1981, submission, merely states that the requirements can be accomplished on a timely basis, but 1 month is not enough. ACA never explains what time period it believes would be reasonable. In the circumstance, we need not discuss this issue any further.

In regard to the computer hardware, the RFP does not specify that the awardee must own the computer hardware. It is clear that an awardee can lease the equipment or subcontract for the equipment. As a matter of fact, the RFP provides the performance requirements and refers, in two instances, to a brand name piece of equipment, but permits "or equal" equipment. In addition, the exact configuration is not set forth in the RFP.

The same can be said of the computer software. The RFP specifies that the proposed system must be capable of interfacing with other ADP systems, specifically the current Education system. It describes certain mandatory requirements, but, as with the computer hardware, does not specify the exact software that an offeror must provide pursuant to the RFP.

We do not find that the hardware or software requirements are unreasonable or overly restrictive. We note that the protesters, while questioning the hardware and software, do not provide many specific objections directed towards the hardware or software themselves. What appears to be the major complaint is that the time period originally provided (30 days) was not sufficient to establish a system which would satisfy the RFP requirements. As noted above, this time period has been extended by amendment No. 3 and, therefore, the major complaint has been addressed by Education. However, COHEAO, in addition to objecting

to the time period, submits that the programming requirements are geared to the incumbents.

Our review of the record, which includes the solicitation for the pilot project and the subject solicitation, indicates that, while there are some of the same requirements, the latter solicitation is different. Some major differences were the type, age and volume of loans covered. For example, the pilot project loans were those unsuccessfully worked on by the Government collectors in the regions. In addition, Education has stated that "[P]erformance according to the pilot project requirement would be unacceptable under the new requirement." Also, "there was no interface with the central processor due to the small volume of accounts and tasks being performed by the Government." Moreover, we have recognized that a firm may enjoy a competitive advantage by virtue of its incumbency or its own particular circumstances. As we stated in Birdsboro Corporation, B-184691, September 8, 1976, 76-2 CPD 226, there is no requirement for equalizing competition by taking into consideration these types of advantages. So long as the incumbents were not given preferential treatment in the competition, their competitors have no basis to object merely because of their advantage, having the equipment utilized in the prior contracts.

With respect to COHEAO's general objection to monitor placement, training, quality control, letter-head and internal updating of files, we reiterate the heavy burden a protester must satisfy when objecting to specifications. Education, in response to the site monitor requirement, states that, since the Government is the only party that can authorize adjustments or deferments of a loan, the onsite monitor would be able to make a decision immediately and thus facilitate loan collection. The monitor would be present solely for this purpose and not to supervise the contractor. Concerning the training, Education's position is that the actual training proposal will come from the contractor with the Government having the right to approve the program. The right of approval gives the Government the necessary assurances that the trainees will be adequately familiar with the applicable laws, regulations and the RFP's scope of work. In regard

to the remainder of the objections, it appears that Education was concerned about the large volume of accounts to be handled and the almost certain need to have an automated system to handle the tasks required by the RFP. Out of necessity, a contractor's files must be constantly updated and its ability to receive data must be assured. As such, Education has a legitimate interest in a contractor's quality control and its updating of internal files. In this circumstance, we find that COHEAO has provided no basis for its general objections to certain RFP requirements.

We deny the protests.

*Harry D. Chas. Clene*  
For the Comptroller General  
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-203996  
B-203996.2

December 23, 1981

The Honorable Les AuCoin  
House of Representatives

Dear Mr. AuCoin:

We refer to your letter to our Office dated August 5, 1981, in regard to Bernard Hasson's interest in the protests of the Coalition of Higher Education Assistance Organizations and American Collectors Association, Inc., concerning solicitation No. 81-093, issued by the Department of Education.

By decision of today, copy enclosed, we have denied the protests.

Sincerely yours,

*Harry R. Chin Chene*

For the Comptroller General  
of the United States

Enclosure